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Elizabeth A. Brown
Clerk of Supreme Court

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 *****

12 INTERNATIONAL ACADEMY OF
STYLE,

13 Petitioner,

14 vs.

15 DIVISION OF INDUSTRIAL
16 RELATIONS, and the NEVADA
DEPARTMENT OF ADMINISTRATION,
17 APPEALS OFFICER SHEILA MOORE,

18 Respondents.

Case No.: CV20-00445

Dept. No.: 8

19 **NOTICE OF APPEAL**

20 **NOTICE IS HEREBY GIVEN THAT:** INTERNATIONAL ACADEMY OF STYLE,
21 Petitioner above named, by and through their counsel of record Jason D. Guinasso, Esq. hereby appeals
22 to the SUPREME COURT OF NEVADA the final judgment from the *Order Denying Petition for*

23 ///

24 ///

25 ///

1 *Judicial Review*, entered in this action on March 1, 2021, attached hereto and incorporated herein as
2 **Exhibit "1"**.

3 **AFFIRMATION**

4 The undersigned does hereby affirm that the preceding document, **NOTICE OF APPEAL**,
5 filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain
6 the social security number of any person.

7 DATED this 30 day of April, 2021.

8 HUTCHINSON & STEFFEN

9
10 By:



11 Jason D. Guinasso, Esq.

12 Nevada Bar No. 8478

13 Alexander R. Velto, Esq.

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19 *Attorney for International Academy of Style*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Hutchinson & Steffen, and that on the 30 day of April, 2021, I electronically filed a true and correct copy of the **NOTICE OF APPEAL**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Donald Smith, Esq.
400 West King Street, Suite 400
Carson City, Nv 89703
Attorney for Division Of Industrial Relations

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 30 day of April, 2021, I deposited for mailing in Reno, Nevada a true and correct copy of the **NOTICE OF APPEAL**, addressed to:

International Academy of Style
Bonnie Schultz & Loni Casteel
2295 Market Street
Reno, NV 89502

Nevada Department of Admin.
Appeals Division
1050 E William St., Suite 450
Carson City, NV 89701

Attorney General's Office
100 N Carson Street
Carson City, NV 89701

Legal Section
Division of Industrial Relations
400 West King Street, Suite 201
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Nevada Department of Admin.
Director
515 East Musser St., 3rd Floor
Carson City, NV 89701



Ga'Bricala Mitchell

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Order Denying Petition for Judicial Review	11

Exhibit “1”

Exhibit “1”

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

INTERNATIONAL ACADEMY OF STYLE, Case No. CV20-00445

Petitioner, Dept. No. 8
vs.

DIVISION OF INDUSTRIAL RELATIONS, and the
NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICER
SHEILA MOORE,

Respondents.

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Before the Court is a Petition for Judicial Review of a decision issued after the underlying worker's compensation matter was heard before Appeals Officer Sheila Moore on November 6, 2018. Petitioner International Academy of Style ("Petitioner" or "International Academy") filed its *Petition for Judicial Review* on March 6, 2020, and its *Opening Brief* on June 1, 2020. Respondent State of Nevada, Department of Business and Industry, Division of Industrial Relations ("Respondent" or the "Division") filed an *Answering Brief* on August 13, 2020, to which Petitioner replied on September 14, 2020. A hearing was held on February 11, 2021, in which the parties had the opportunity to address all issues.

Having reviewed the record, briefs, the parties' arguments, and applicable authority, the Court **DENIES** the *Petition for Judicial Review*. Thus, the Court **AFFIRMS** the Appeals Officer's *Decision and Order* filed on February 20, 2020.

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1 **BACKGROUND**

2 Based upon the record, the briefings of parties, and other documentary evidence submitted,
3 the Court is aware of the following facts:

4 In 2014, the Attorney General of the State of Nevada filed a criminal complaint against
5 International Academy for failing to maintain workers compensation insurance for its employees for
6 the period of December 21, 2010 through September 2, 2015, a misdemeanor violation of
7 NRS 616D.200(3)(a). International Academy then completed the terms of a deferred prosecution
8 agreement on March 17, 2016, and the charges were dismissed on October 19, 2016.

9 As part of the deferred prosecution agreement, International Academy obtained workers'
10 compensation insurance for the business effective December 1, 2015. However, International
11 Academy apparently failed to renew the policy once the charges were dismissed, effective
12 December 1, 2016. The Division notified International Academy of its obligation to maintain
13 workers' compensation and warned that failure to provide evidence the business was closed or had
14 no employees would result in further action taken by the state. A new workers' compensation policy
15 was obtained, effective December 31, 2016.

16 The Division issued a determination on March 14, 2017, therein imposing two premium
17 penalties in the amounts of: (1) \$251.10 for the lapse of coverage from December 1, 2016, through
18 December 30, 2016; and (2) \$16,390.94 for the prior lapse of coverage from December 21, 2010
19 through November 30, 2015. International Academy appealed the determination on March 20,
20 2017. On June 9, 2017, the \$16,390.94 premium penalty was amended to \$16,190.15.

21 After an evidentiary hearing on or about November 6, 2018, and a closing argument hearing
22 on or about August 1, 2019, the Appeals Officer found against International Academy. In particular,
23 in its *Decision and Order* filed February 20, 2020, the Appeals Officer concluded the instructors
24 were employees, and International Academy was required to, but failed to maintain workers'
25 compensation coverage for these employees. Additionally, the Appeals Officer found both premium
26 penalties, as amended, were properly calculated using the correct class codes for each individual
27 instructor and staff. More specifically, the Appeals Officer concluded: (1) the instructors of
28 International Academy are not exempt from the employee classification under Nevada law; (2) the

instructors are not engaged in an independent enterprise pursuant to the applicable statute; (3) the instructors do not meet the legal criteria to qualify as independent contractors; and (4) the asserted defenses are inapplicable.

Thereafter, International Academy filed the instant petition for judicial review. The Court now addresses the instant *Petition for Judicial Review* and finds the following.

STANDARD OF REVIEW

When a party of record in an administrative proceeding is aggrieved by a final decision in a contested case, it may file a petition for judicial review. NRS 233B.130(1). Judicial review of agency decisions is governed by the Administrative Procedure Act, codified in NRS Chapter 233B: The Nevada Administrative Procedure Act. *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d 831, 834 (2014). Pursuant to NRS 233B.135(1), judicial review of a final decision of an agency must be conducted by the Court without a jury and confined to the record. The reviewing court may remand, affirm or set the decision aside in whole or in part, if the substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B.135(3)(a)-(f); *See North Las Vegas v. Pub. Serv. Comm’n*, 83 Nev. 278, 281, 429 P.2d 66, 67–68 (1967); *see also Nassiri v. Chiropractic Physicians’ Bd.*, 130 Nev. 245, 249, 327 P.3d 487, 490 (2014) (clarifying that NRS 223B.135 outlines a standard of review and not a standard of proof).

Legal questions are reviewed de novo. *Southern Nevada Operating Engineers v. Labor Commissioner*, 121 Nev. 523, 527–28, 119 P.3d 720, 724 (2005) (citing *State, Dep’t of Bus. & Indus., Office of Labor Com’r v. Granite Const. Co.*, 118 Nev. 83, 86, 40 P.3d 423, 425 (2002)). However, the final decision of the agency, i.e. the appeals officer, is deemed reasonable and lawful until it is reversed or set aside (in whole or in part) by the court. NRS 223B.135(2).

Moreover, in assessing a final agency decision, great deference is afforded to the fact-based conclusions of law made by an appeal officer and his decision will not be overturned if it is supported by substantial evidence. *Grover C. Dils. Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). Review of an administrative agency's decision is limited to the determination of whether the record contains substantial evidence to support the agency's decision. *See Taylor v. State Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013); *State, Dep't. of Motor Vehicles & Pub. Safety v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991) (citing *State Dep't of Motor Vehicles v. Jenkins*, 99 Nev. 460, 462, 663 P.2d 1186, 1188 (1983)). In this case, "substantial evidence" is evidence which a reasonable mind might accept as adequate to support a conclusion. NRS 233B.135(4). This standard of review thus refers to the quality and quantity of the evidence necessary to support factual determinations. *Nassiri*, 130 Nev. at 249–50, 327 P.3d at 490. "It contemplates deference to those determinations on review, asking only whether the facts found by the administrative factfinder are reasonably supported by sufficient, worthy evidence in the record." *Id.*

The inquiry is confined to a search for an abuse of discretion, clear error, or an arbitrary and capricious decision. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *see also Employment Security Dep't v. Holmes*, 112 Nev. 275, 279, 914 P.2d 611, 614 (1996) ("...[the Court] must review the evidence presented to the administrative body and ascertain whether the body acted arbitrarily or capriciously, thus abusing its discretion."). "[A]n abuse of discretion is characterized by an application of unreasonable judgment to a decision that is within the actor's rightful prerogatives..." *Falline v. GNLV Corporation*, 107 Nev. 1004, 1009–10 n.3, 823 P.2d 888, 892 n.3 (1991). A decision is arbitrary and capricious when the administrative agency disregards the facts and circumstances involved. *Meadow v. Civil Serv. Bd. of Las Vegas Metro. Police Dep't*, 105 Nev. 624, 627, 781 P.2d 772, 774 (1989) (citing *State v. Ford*, 110 Wash.2d 827, 830, 755 P.2d 806, 808 (1988)). In addition, "although statutory construction is generally a question of law reviewed de novo, this court defer[s] to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." *Taylor*, 129 Nev. at 930, 314 P.3d at 951 (citing

1 *Dutchess Bus. Serv., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165
2 (2008) (internal quotations omitted)).

3 **DISCUSSION**

4 In evaluating the arguments made by both International Academy and the Division, the
5 Court has considered the record in its entirety, supporting documentation, parties' arguments, and
6 the pleadings. In doing so, it finds that the Appeals Officer's *Decision and Order* filed on
7 February 20, 2020, is not in violation of constitutional or statutory provisions, affected by error of
8 law, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
9 record. Further, International Academy was not arbitrary or capricious or characterized by abuse of
10 discretion nor did it exceed the Appeals Officer's authority. Rather, the Court finds that there was
11 substantial evidence to support the Appeals Officer's final order under review by this Court.

12 In reaching this conclusion, the Court finds as follows:

13 **A. The Record Supports the Employee Classification Finding**

14 The Appeals Officer found NRS 616A.110(9) to be inapplicable to exempt instructors from
15 the employee classification pursuant to NRS 616A.105. International Academy challenges this, and
16 argues the Appeals Officer erred as a matter of law in finding NRS 616A.110(9) inapplicable. More
17 specifically, International Academy contends NRS 616A.110(9) applies because, *inter alia*, the
18 instructors perform services pursuant to a written agreement, which provides that instructors are not
19 employees for the purposes of NRS 616A.

20 A review of the statute advises the Appeals Officer properly determined NRS 616A.110(9)
21 inapplicable. Nevada Revised Statute 616A.110(9) provides that a person who meets the following
22 criteria is exempt from the definition of employee:

23 (a) Directly sells or solicits the sale of products, in person or by
24 telephone;

25 (2) To another person from his or her home or place other than a
26 retail store;

26 (b) Receives compensation or remuneration based on sales to
27 customers rather than for the number of hours that the person
28 works; **and**

(c) Performs pursuant to a written agreement with the person for
whom the services are performed which provides that the person

1 who performs the services is not an employee for the purposes of
2 this chapter.

3 Based upon the Court's observation, it is clear the Appeals Officer adequately analyzed the
4 statute as evidenced in finding that "...the instructors do not solicit or sell products and do not
5 receive remuneration based on sale, NRS 616A.110(9) does not apply to exclude the instructors as
6 employees..." And while International Academy maintains the Appeals Officer erred with respect
7 to NRS 616A.110(9), this Court finds the contrary. Instead, this Court determines that by presence
8 of the term "and," NRS 616A.110(9) requires all three prongs to be met for a person to be excluded
9 from the definition of employee. Furthermore, a review of the record depicts the Appeals Officer
10 had substantial evidence to conclude NRS 616A.110(9) inapplicable because the instructors failed
11 to meet subsection (b), i.e., receiving compensation or remuneration based on sales rather than for
12 the number of hours worked. Therefore, the Court concludes the Appeals Officer did not err as a
13 matter of law, and its decision is supported by substantial evidence. Thus, this Court is unwilling to
14 disturb the Appeals Officer's findings.

15 **B. The Record Supports Independent Enterprise Finding**

16 Next, International Academy contends its instructors are an independent enterprise pursuant
17 to NRS 616B.603. The Appeals Officer found:

18 [T]he instructors are clearly furthering the operation of business of the
19 school by providing the instruction necessary to qualify as a
20 cosmetology school. The instructors are clearly in the same trade
 business, occupation or profession as Ms. Casteel and Ms. Schultz.

21 International Academy maintains that because the instructors are not in the same trade, they
22 are an independent enterprise under NRS 616B.603. Additionally, International Academy argues, it
23 can operate without any of the instructors.

24 Nevada Revised Statute 616B.603 provides that a person is not an employer if:

- 25 (a) The person enters into a contract with another person or business
26 which is an independent enterprise; and
27 (b) The person is not in the same trade, business, profession or
28 occupation as the independent enterprise.
 2. ... "independent enterprise" means a person who holds himself or
 herself out as being engaged in a separate business and:

- 1 (a) Holds a business or occupational license in his or her own name;
2 or
3 (b) Owns, rents or leases property used in furtherance of the business.

4 Furthermore, the Nevada Supreme Court has held that “[i]f a principal contractor is not a
5 licensed contractor, it will be the statutory employer only if it can show that it is in the “same trade”
6 under the *Meers* test. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1349 (1995). The *Meers*
7 test “is not one of whether the subcontractor’s activity is useful, necessary, or even absolutely
8 indispensable to the statutory employer’s business.... The test is whether that indispensable activity
9 is, in that business, normally carried on through employees rather than independent contractors.”
10 *Meers v. Haughton Elevator*, 101 Nev. 283, 286 (1985).

11 The record suggests the Appeals Officer had substantial evidence to conclude that the
12 instructors were not engaged in an independent enterprise. For instance, NRS 616B.6039(1)(a)
13 requires both parties to enter into a contract. However, International Academy did not have any
14 written agreements in place prior to 2013. Thus, International Academy failed to meet the statutory
15 requirement for the period from 2010 to 2013. Moreover, the fact that International Academy
16 requires instructors to pay “chair rental fees” or “choose at his or her own discretion to teach other
17 general classes in lieu of the rental fee,” fails to meet the criteria under NRS 616B.6039(2)(b) since
18 the original agreements did not include any mention of rental chairs or booths. The Court concludes
19 the Appeals Officer’s decision is supported by substantial evidence, and thus it is unwilling to
20 disturb the Appeals Officer’s findings.

21 **C. The Record Supports the Independent Contractor Finding**

22 International Academy’s next contention is that the Appeals Officer erred in finding the
23 instructors were not independent contractors pursuant to NRS 616A.255 and the five-part “control
24 test” enunciated by the Nevada Supreme Court in *Clark Cty. v. State Indus. Ins. Sys.*

25 Nevada Revised Statute 616A.255 defines an “Independent contractor” as a “person who
26 renders service for a specified recompense for a specified result, under the control of the person’s
27 principal as to the result of the person’s work only and not as to the means by which such result is
28 accomplished.” Furthermore, in determining whether an employer-employee relationship exist,
courts apply the following five-part “control test”:

- (1) the degree of supervision;
- (2) the source of wages;
- (3) the existence of a right to hire and fire;
- (4) the right to control the hours and location of employment; and
- (5) the extent to which the workers' activities further the general business concerns of the alleged employer.

Clark Cty. v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986).

A review of the record depicts the Appeals Officer had substantial evidence to conclude that the control test weighed against the International Academy. Consider, for example, the following:

First, the Appeals Officer found International Academy "must ensure that instructors are providing instruction according to the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary." The record illustrates multiple instances of supervision, including: (1) one specific contract requires the instructor to record grades and attendance; (2) statements from Ms. Casteel's to the Attorney General's investigator in which she explained International Academy terminated an instructor because the instructor required a student to bring her food. Conduct which Ms. Casteel deemed unacceptable; (3) termination clauses in later agreements which provided International Academy "may terminate this agreement at any time "for cause," the grounds for which are defined below." Those grounds include "C. Instructor fails to perform his or her services in a competent manner" and "G. Instructor fails to perform the terms and conditions as agreed upon under this Agreement." The Court notes some degree of supervision is required to determine whether an instructor was performing pursuant to the terms of the agreement and providing competent instruction in accordance with the professional standards.

Second, the Appeals Officer found the source of the instructors' wages derives from International Academy. While International Academy appears to maintain that it is not the source of wages because it has designated a specific account for wages, the Appeals Officer considered this evidence by finding that "simply designating a specific account does not negate this fact," and drawing the following analogy: "A certain amount of money is set aside from students tuition to provide for compensation to the instructors similar in fashion to corporation setting aside a certain amount profit for compensation of employees."

1 Third, the Appeals Officer found “[c]learly, [International Academy] has the right to sever a
2 relationship with an instructor that is not teaching according to the guidelines of the Board of
3 Cosmetology.” This Court again notes Ms. Casteel’s statements regarding the termination of an
4 instructor for requiring a student to bring her food. The instructor ultimately filed a successful
5 unemployment claim with the Department of Employment, Training and Rehabilitation against
6 International Academy, giving further credence to this factor.

7 Fourth, the Appeals Officer found that International Academy “controls the location of
8 employment since the instruction must be done at the school. The instructor is not allowed to
9 provide the instruction at a salon or residence. The hours are controlled by the school as two
10 instructors are required to be present at all times.” This Court notes each agreement contains a
11 schedule during which the instructor is to work between Tuesday and Saturday with hours ranging
12 from 8:45 a.m. to 10:30 p.m. Thus, suggesting control of the hours and location of employment.

13 Fifth, the Appeals Officer found “obviously the instructors are furthering the business
14 concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz who also
15 both instruct students.” The record does not suggest otherwise.

16 Finally, the Appeals Officer found the testimony of Ms. Casteel to be self-serving, noted that
17 it appeared to be scripted and therefore not found to be credible. Additionally, the Appeals Officer
18 also found the witness statements introduced by International Academy to be “nearly verbatim and
19 obviously prepared by the same individual and therefore were given no weight.”

20 Based upon the Court’s observation of the persuasive evidence above, as well as the record
21 as a whole, it is clear the Appeals Officer adequately analyzed both the law and the specific factual
22 allegations which were lodged against International Academy. And while International Academy
23 contends that the evidence in the record depicts that the Appeals Officer’s decision was “clearly
24 erroneous,” this Court finds quite the contrary. Instead, this Court determines that there was
25 virtually overwhelming evidence from which the Appeals Officer concluded the instructors did not
26 meet the independent contractor classification. Further, the Court concludes the Appeals Officer did
27 not violate NRS 233B.135(3), and thus it is unwilling to disturb the Appeals Officer’s findings.

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Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of March, 2021, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

NONE

Further, I certify that on this 1 day of March, 2021, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

JASON GUINASSO, ESQ.

DONALD C. SMITH, ESQ.

Chinese Kuhl

Judicial Assistant

CODE: 1310

Jason D. Guinasso, Esq.
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500 Damonte Ranch Parkway, Suite 980
Reno, NV 89521
Attorney for International Academy of Style

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

INTERNATIONAL ACADEMY OF
STYLE,

Petitioner,

vs.

DIVISION OF INDUSTRIAL
RELATIONS, and the NEVADA
DEPARTMENT OF ADMINISTRATION,
APPEALS OFFICER SHEILA MOORE,

Respondents.

Case No.: CV20-00445

Dept. No.: 8

CASE APPEAL STATEMENT

COMES NOW, Petitioner, INTERNATIONAL ACADEMY OF STYLE ("IAS"), by and through his attorney of record, JASON D. GUINASSO, ESQ. of HUTCHISON & STEFFEN, PLLC, pursuant to NRAP 3(f), hereby submits to the Court Appellant's Case Appeal Statement:

1. Name of appellant filing this case appeal statement:

International Academy of Style

1 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

2 The Honorable District Court Judge, Barry Breslow - Case No. CV20-00445

3 **3. Identify each appellant and the name and address of counsel for each appellant:**

4 IAS is represented by Jason D. Guinasso, Esq. and Alexander R. Velto, Esq.

- 5 ○ Appellate Counsel: Jason D. Guinasso, Esq.
- 6 ○ Trial Counsel: Jason D. Guinasso, Esq.
- 7 ○ Address: Hutchison & Steffen, PLLC: 500 Damonte Ranch Parkway, Suite 980,
- 8 Reno, NV 89521

9 **4. Identify each respondent and the name and address of appellate counsel, if known, for**
10 **each respondent (if the name of the respondent's appellate counsel is unknown, indicate as much**
11 **and provide the name and address of that respondent's trial counsel):**

12 Department of Business and Industry Division of Industrial Relations, Senior Division Counsel

- 13 ○ Appellate Counsel: Donald Smith, Esq.
- 14 ○ Respondent, Division of Industrial Relations
- 15 ○ Trial Counsel: Donald Smith, Esq.
- 16 ○ Address: 400 West King Street, Suite 400, Carson City, NV 89703
- 17 ○ Mailing Address: Same as Address

17 Nevada Department of Admin.

- 18 ○ Appeals Division
- 19 ○ Address: 1050 E William St., Suite 450, Carson City, NV 89701

20 Attorney General's Office

- 21 ○ Address: 100 N Carson Street, Carson City, NV 89701

22 Division of Industrial Relations

- 23 ○ Legal Section
- 23 ○ Address: 400 West King Street, Suite 201, Carson City, NV 89703

24 Nevada Department of Admin.

- 25 ○ Director

1 ○ Address: 515 East Musser St., 3rd Floor, Carson City, NV 89701

2 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
3 **licensed to practice law in Nevada and, if so, whether the district court granted that attorney**
4 **permission to appear under SCR 42 (attach a copy of any district court order granting such**
5 **permission):**

6 Not applicable.

7 **6. Indicate whether appellant was represented by, appointed or retained counsel in the**
8 **District Court:**

9 The Appellant was represented by retained counsel in the Department of Business and Industry
10 Division of Industrial Relations, Senior Division Counsel.

11 **7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

12 The Appellant is represented by retained counsel on appeal.

13 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date**
14 **of entry of the district court order granting such leave:**

15 Not applicable.

16 **9. Indicate the date the proceedings commenced in district court:**

17 March 6, 2020

18 **10. Provide a brief description of the nature of the action and result in the district court,**
19 **including the type of judgment or order being appealed and the relief granted by the district**
20 **court:**

21 International Academy of Style “IAS” is a small for-profit institution located in Reno, Nevada
22 offering licensure in Cosmetology, Hair Design, Esthetician, and Nail Technician. Since 1998, every
23 cosmetology professional engaged by IAS executed a contract with IAS recognizing them as
24 independent contractors working with the school. These contracts constitute written agreements
25 between IAS and cosmetology professionals, expressly providing that cosmetology professionals

1 performing services under the Agreement are not employees under the Nevada Industrial Insurance Act
2 (“NIIA”). Out of caution and based on an agreement with the State of Nevada, each Independent
3 Contractor planning to work with IAS obtained a Certificate of Liability Insurance for 2017, signing an
4 Independent Instructor Agreement in the process, and acquiring a Sole Proprietor Business License in
5 the state of Nevada. Meanwhile, IAS also obtained workers’ compensation insurance for 2016 and
6 2017.

7 Simply, the Division of Industrial Relations (“DIR”) has misclassified the cosmetology
8 professionals who contract with IAS. IAS is not the “Employer” of the cosmetology professionals they
9 contract with. Instead, cosmetology professionals who contract with IAS are “Independent
10 Contractors” and “Independent Enterprises” under Nevada Law. They are not in the “same trade or
11 business” as IAS.

12 The March 14, 2017, DIR determinations assessing a premium penalty in the amount of
13 \$251.10 for the period of December 1 to December 30, 2016, and a premium penalty in the amount of
14 \$16,390.94 for the period of December 21, 2010, to November 30, 2015, against IAS are not supported
15 by the evidence or Nevada law. Every cosmetology professional who contracted with IAS had
16 workers’ compensation coverage either through their own coverage or through coverage provided by
17 IAS during the relevant period of inquiry, December 1 to December 30, 2016. Moreover, the premium
18 penalties for the period December 21, 2010 to November 30, 2015 were unlawfully assessed against
19 IAS and should have been barred by the Appeals Officer under the Doctrine of Res Judicata, the
20 Doctrine of Laches, and the Doctrine of Equitable Estoppel from asserting claims for premium
21 penalties.

22 In this regard, the Appeals Officer has abused her discretion in affirming the determinations of
23 DIR to impose premium penalties. IAS seeks this appeal to review the Appeals Officer’s findings of
24 fact and conclusions of law under NRS 233B.135(3) because the final decision of the Appeals Officer
25 has prejudiced its rights under the Nevada Industrial Insurance Act (“NIIA”), has been affected by

1 other grievous errors of law, is clearly erroneous in view of the reliable, probative, and substantial
2 evidence on the whole record, and is otherwise arbitrary, capricious, or characterized by abuse of
3 discretion.

4 In IAS's Petition for Judicial Review, filed on March 6, 2020, IAS requested that the Decision
5 and Order be reviewed because: (1) the Appeals Officer erred as a matter of law by concluding the
6 instructors of IAS should not be excluded from the definition of "Employee" under Nevada law. (2)
7 The Appeals Officer erred as a matter of law by concluding that IAS is the "Employer" of the
8 cosmetology professionals they contract with under Nevada law. (3) The Appeals Officer erred as a
9 matter of law by concluding the cosmetology professionals who contract with IAS are not "Independent
10 Contractors" under Nevada law. (4) The Appeals Officer erred as a matter of law by concluding the
11 cosmetology professionals who contract with IAS are not "Independent Enterprises." (5) The Appeals
12 Officer erred as a matter of law by concluding the cosmetology professionals who contract with IAS
13 are in the "Same Trade" as IAS. (6) The Appeals Officer erred as a matter of law in concluding that
14 despite the fact that all cosmetology professionals had workers' compensation coverage either through
15 their own coverage or through coverage provided by IAS, the Division of Industrial Relations ("DIR")
16 determinations issued on March 14, 2017, and assessing a premium penalty in the amount of \$251.10
17 for the period of December 1 to December 30, 2016, and a premium penalty in the amount of
18 \$16,390.94 for the period of December 21, 2010, to November 30, 2015, were supported by the
19 evidence presented and Nevada law. (7) The Appeals Officer erred as a matter of law in concluding
20 DIR is not barred by Res Judicata, the Doctrine of Laches, and the Doctrine of Equitable Estoppel from
21 asserting claims for premium penalties for the period December 21, 2010 to November 30, 2015.

22 Oral Arguments were heard before the District Court on February 11, 2021.

23 On March 1, 2021, the District Court issued an Order Denying Petition for Judicial Review. The
24 Court's Order and consequential holding is now the subject of this appeal.

25 ///

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:

No, the case is not currently the subject of an appeal.

12. Indicate whether this appeal involves child custody or visitation:

No, the appeal does not involve child custody or visitation.

13. If this case is a civil case, indicate whether this appeal involves the possibility of settlement:

Yes, the issues on appeal involve the possibility of settlement.

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **CASE APPEAL STATEMENT**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED this 30 day of April, 2021.

HUTCHINSON & STEFFEN

By:


Jason D. Guinasso, Esq.

Nevada Bar No. 8478

Alexander R. Velto, Esq.

Nevada Bar No. 14961

Tyson D. League, Esq.

Nevada Bar No. 13366

500 Damonte Ranch Parkway, Suite 980

Reno, NV 89521

Attorney for International Academy of Style

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Hutchinson & Steffen, and that on the 30 day of April, 2021, I electronically filed a true and correct copy of the **CASE APPEAL STATEMENT**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Donald Smith, Esq.
400 West King Street, Suite 400
Carson City, NV 89703
Attorney for Division Of Industrial Relations

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 30 day of April, 2021, I deposited for mailing in Reno, Nevada a true and correct copy of the **CASE APPEAL STATEMENT**, addressed to:

International Academy of Style
Bonnie Schultz & Loni Casteel
2295 Market Street
Reno, NV 89502

Nevada Department of Admin.
Appeals Division
1050 E William St., Suite 450
Carson City, NV 89701

Attorney General's Office
100 N Carson Street
Carson City, NV 89701

Legal Section
Division of Industrial Relations
400 West King Street, Suite 201
Carson City, NV 89703

Nevada Department of Admin.
Director
515 East Musser St., 3rd Floor
Carson City, NV 89701



Ga'Brieala Mitchell

**SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA
COUNTY OF WASHOE**

Case History - CV20-00445

Case Description: INTERNATIONAL ACADEMY VS DV OF INDUS RELATIONS (D8)

Case Number: CV20-00445 Case Type: WORKER'S COMPENSATION - Initially Filed On: 3/6/2020

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - BARRY L. BRESLOW - D8	Active
PLTF - INTERNATIONAL ACADEMY OF STYLE - @92004	Active
DEFT - SHEILA MOORE - @1238246	Active
DEFT - NEVADA DEPARTMENT OF ADMINISTRATION APPEALS OFFICER - @1245315	Active
DEFT - DIVISION OF INDUSTRIAL RELATIONS - @14834	Active
ATTY - Jason D. Guinasso, Esq. - 8478	Active
ATTY - Donald C. Smith, Esq. - 413	Active
ATTY - Alexander Richard Velto, Esq. - 14961	Active

Disposed Hearings

- 1 Department: D8 -- Event: CONFERENCE CALL -- Scheduled Date & Time: 3/9/2020 at 15:45:00

Event Disposition: D435 - 3/9/2020
- 2 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 9/15/2020 at 15:30:00
Extra Event Text: FULLY BRIEFED PETITION FOR JUDICIAL REVIEW
Event Disposition: S200 - 10/29/2020
- 3 Department: D8 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 1/28/2021 at 11:00:00
Extra Event Text: ON FULLY BRIEFED PETITION FOR JUDICIAL REVIEW
Event Disposition: D445 - 1/28/2021
- 4 Department: D8 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 2/11/2021 at 14:00:00

Event Disposition: D840 - 2/11/2021

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|---|
| 1 | 3/6/2020 | - | \$3550 - \$Pet for Judicial Review
Additional Text: Transaction 7779629 - Approved By: CSULEZIC : 03-06-2020:14:14:35 |
| 2 | 3/6/2020 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$255.00 was made on receipt DCDC656673. |
| 3 | 3/6/2020 | - | 1270 - Application ...
Additional Text: APPLICATION FOR STAY OF APPEAL OFFICERS FEBRUARY 20, 2020 DECISION AND ORDER - Transaction 7780283 - Approved By: NOREVIEW : 03-06-2020:15:43:17 |
| 4 | 3/6/2020 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 7780288 - Approved By: NOREVIEW : 03-06-2020:15:44:23 |

Report Does Not Contain Sealed Cases or Confidential Information

- 5 3/10/2020 - MIN - ***Minutes
Additional Text: 03/09/2020 - Conference Call - Transaction 7785296 - Approved By: NOREVIEW : 03-10-2020:15:13:49
- 6 3/10/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7785301 - Approved By: NOREVIEW : 03-10-2020:15:15:03
- 7 4/22/2020 - 3746 - Record on Appeal
Additional Text: ORIGINAL RECORD ON APPEAL IN ACCORDANCE WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT
Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 8 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 9 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 10 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 11 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 12 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 13 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 14 4/22/2020 - 3373 - Other ...
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27
- 15 4/22/2020 - 3373 - Other ...
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- 16 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

17 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

18 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

19 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

20 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

21 4/22/2020 - 3373 - Other ...

Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED APRIL 22, 2020 STRIKING THE CONTINUATION OF THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1) - (Should be attached as a continuation (exhibit) of the Original Record onAppeal Document) Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

22 4/22/2020 - 4195 - Transmittal of Rec. on Appeal

Additional Text: TRANSMITTAL OF RECORD ON APPEAL Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

23 4/22/2020 - 1365 - Certificate of Transmittal

Additional Text: Cert of Trans - Transaction 7845786 - Approved By: NOREVIEW : 04-22-2020:12:27:27

24 4/22/2020 - NEF - Proof of Electronic Service

Additional Text: Transaction 7845787 - Approved By: NOREVIEW : 04-22-2020:12:28:42

25 4/23/2020 - 2610 - Notice ...

Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55

26 4/23/2020 - 2610 - Notice ...

Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55

27 4/23/2020 - 2610 - Notice ...

Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55

28 4/23/2020 - 2610 - Notice ...

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- 29 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 30 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 31 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 32 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 33 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 34 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 35 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 36 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 37 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 38 4/23/2020 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT FILED: CONTINUATION OF THE RECORD ON APPEAL FILED 4-22-20 BY SHEILA MOORE (NO CASE NUMBER OR AFFIRMATION) SHOULD HAVE BEEN ATTACHED AS AN EXHIBIT - Transaction 7846826 - Approved By: YVILORIA : 04-23-2020:08:31:55
- 39 4/23/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7846829 - Approved By: NOREVIEW : 04-23-2020:08:34:18
- 40 6/1/2020 - 2640 - Opening Brief
Additional Text: Transaction 7902385 - Approved By: NOREVIEW : 06-01-2020:15:27:49
- 41 6/1/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7902390 - Approved By: NOREVIEW : 06-01-2020:15:28:44
- 42 6/4/2020 - 2520 - Notice of Appearance
Additional Text: Division of Industrial Relations' Statement of Intent to Participate - Transaction 7908269 - Approved By: SACORDAG : 06-04-2020:08:52:39
- 43 6/4/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7908370 - Approved By: NOREVIEW : 06-04-2020:08:53:41

- 44 8/13/2020 - 1170 - Answering Brief
Additional Text: RESPONDENT DIVISION'S ANSWERING BRIEF - Transaction 8018645 - Approved By: YVILORIA : 08-13-2020:16:13:20
- 45 8/13/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8018725 - Approved By: NOREVIEW : 08-13-2020:16:14:42
- 46 9/14/2020 - 3785 - Reply Brief
Additional Text: PETITION'S REPLY BRIEF - Transaction 8065031 - Approved By: YVILORIA : 09-14-2020:10:28:59
- 47 9/14/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8065074 - Approved By: NOREVIEW : 09-14-2020:10:30:26
- 48 9/15/2020 - 3860 - Request for Submission
Additional Text: Transaction 8068013 - Approved By: NOREVIEW : 09-15-2020:12:42:11
DOCUMENT TITLE: PETITIONER'S OPENING BRIEF; RESPONDENT DIVISION'S ANSWERING BRIEF; PETITIONER'S REPLY BRIEF
PARTY SUBMITTING: JASON GUINASSO, ESQ
DATE SUBMITTED: 09/15/2020
SUBMITTED BY: SJA
DATE RECEIVED JUDGE OFFICE:
- 49 9/15/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8068018 - Approved By: NOREVIEW : 09-15-2020:12:43:11
- 50 10/29/2020 - 3242 - Ord Setting Hearing
Additional Text: Transaction 8140103 - Approved By: NOREVIEW : 10-29-2020:14:51:59
- 51 10/29/2020 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 52 10/29/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8140106 - Approved By: NOREVIEW : 10-29-2020:14:52:55
- 53 1/22/2021 - 2245 - Mtn in Limine
Additional Text: "NOTICE ATTACHED" - NOTICE OF STRICKEN DOCUMENT FILED 2/11/21 STRIKING THE DEFENDANT'S MOTION IN LIMINE FOR THE FOLLOWING REASON: DOCUMENT IS FILED IN THE WRONG CASE – WDCR10(c)(1) – Transaction 8260069 - Approved By: NOREVIEW : 01-22-2021:15:00:25
- 54 1/22/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8260072 - Approved By: NOREVIEW : 01-22-2021:15:01:21
- 55 2/4/2021 - MIN - ***Minutes
Additional Text: 1/28/21 - ORAL ARGUMENTS - Transaction 8279743 - Approved By: NOREVIEW : 02-04-2021:12:50:21
- 56 2/4/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8279747 - Approved By: NOREVIEW : 02-04-2021:12:51:21
- 57 2/11/2021 - 2610 - Notice ...
Additional Text: OF STRICKEN DOCUMENT - Transaction 8292339 - Approved By: NMASON : 02-11-2021:15:28:03
- 58 2/11/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8292353 - Approved By: NOREVIEW : 02-11-2021:15:29:01
- 59 3/1/2021 - 2840 - Ord Denying ...
Additional Text: Transaction 8318555 - Approved By: NOREVIEW : 03-01-2021:13:22:27

- 60 3/1/2021 - F230 - Other Manner of Disposition
No additional text exists for this entry.
- 61 3/1/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8318559 - Approved By: NOREVIEW : 03-01-2021:13:23:24
- 62 3/16/2021 - MIN - ***Minutes
Additional Text: 2/11/21 ORAL ARGUMENTS - PETITION FOR JUDICIAL REVIEW - Transaction 8345356 - Approved By: NOREVIEW : 03-16-2021:13:36:29
- 63 3/16/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8345359 - Approved By: NOREVIEW : 03-16-2021:13:37:28
- 64 3/31/2021 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 8371348 - Approved By: NOREVIEW : 03-31-2021:16:11:55
- 65 3/31/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8371357 - Approved By: NOREVIEW : 03-31-2021:16:12:55
- 66 4/30/2021 - 1310 - Case Appeal Statement
Additional Text: Transaction 8423187 - Approved By: YVILORIA : 05-03-2021:08:05:56
- 67 4/30/2021 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 8423187 - Approved By: YVILORIA : 05-03-2021:08:05:56
- 68 4/30/2021 - SAB - **Supreme Court Appeal Bond
Additional Text: INTERNATIONAL ACADEMY OF STYLE - Transaction 8423217 - Approved By: YVILORIA : 05-03-2021:08:20:56
- 69 5/3/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$24.00 was made on receipt DCDC673420.
- 70 5/3/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8423424 - Approved By: NOREVIEW : 05-03-2021:08:06:59
- 71 5/3/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$500.00 was made on receipt DCDC673423.
- 72 5/3/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8423456 - Approved By: NOREVIEW : 05-03-2021:08:21:58
- 73 5/3/2021 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8423614 - Approved By: NOREVIEW : 05-03-2021:09:35:54
- 74 5/3/2021 - 4113 - District Ct Deficiency Notice
Additional Text: NOTICE OF APPEAL DEFICIENCY - SUPREME COURT FILING FEES (DUE TO PUBLIC CLOSURE OF COURTHOUSE AND APPEALS CLERK UNABLE TO RECEIVE FEE) SUPREME COURT WILL SEND A NOTICE TO PAY ONCE APPEAL IS RECEIVED - Transaction 8423614 - Approved By: NOREVIEW : 05-03-2021:09:35:54
- 75 5/3/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8423620 - Approved By: NOREVIEW : 05-03-2021:09:36:50

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

INTERNATIONAL ACADEMY OF STYLE, Case No. CV20-00445

Petitioner,

vs.

Dept. No. 8

DIVISION OF INDUSTRIAL RELATIONS, and the
NEVADA DEPARTMENT OF
ADMINISTRATION, APPEALS OFFICER
SHEILA MOORE,

Respondents.

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Before the Court is a Petition for Judicial Review of a decision issued after the underlying worker's compensation matter was heard before Appeals Officer Sheila Moore on November 6, 2018. Petitioner International Academy of Style ("Petitioner" or "International Academy") filed its *Petition for Judicial Review* on March 6, 2020, and its *Opening Brief* on June 1, 2020. Respondent State of Nevada, Department of Business and Industry, Division of Industrial Relations ("Respondent" or the "Division") filed an *Answering Brief* on August 13, 2020, to which Petitioner replied on September 14, 2020. A hearing was held on February 11, 2021, in which the parties had the opportunity to address all issues.

Having reviewed the record, briefs, the parties' arguments, and applicable authority, the Court **DENIES** the *Petition for Judicial Review*. Thus, the Court **AFFIRMS** the Appeals Officer's *Decision and Order* filed on February 20, 2020.

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BACKGROUND

Based upon the record, the briefings of parties, and other documentary evidence submitted, the Court is aware of the following facts:

In 2014, the Attorney General of the State of Nevada filed a criminal complaint against International Academy for failing to maintain workers compensation insurance for its employees for the period of December 21, 2010 through September 2, 2015, a misdemeanor violation of NRS 616D.200(3)(a). International Academy then completed the terms of a deferred prosecution agreement on March 17, 2016, and the charges were dismissed on October 19, 2016.

As part of the deferred prosecution agreement, International Academy obtained workers' compensation insurance for the business effective December 1, 2015. However, International Academy apparently failed to renew the policy once the charges were dismissed, effective December 1, 2016. The Division notified International Academy of its obligation to maintain workers' compensation and warned that failure to provide evidence the business was closed or had no employees would result in further action taken by the state. A new workers' compensation policy was obtained, effective December 31, 2016.

The Division issued a determination on March 14, 2017, therein imposing two premium penalties in the amounts of: (1) \$251.10 for the lapse of coverage from December 1, 2016, through December 30, 2016; and (2) \$16,390.94 for the prior lapse of coverage from December 21, 2010 through November 30, 2015. International Academy appealed the determination on March 20, 2017. On June 9, 2017, the \$16,390.94 premium penalty was amended to \$16,190.15.

After an evidentiary hearing on or about November 6, 2018, and a closing argument hearing on or about August 1, 2019, the Appeals Officer found against International Academy. In particular, in its *Decision and Order* filed February 20, 2020, the Appeals Officer concluded the instructors were employees, and International Academy was required to, but failed to maintain workers' compensation coverage for these employees. Additionally, the Appeals Officer found both premium penalties, as amended, were properly calculated using the correct class codes for each individual instructor and staff. More specifically, the Appeals Officer concluded: (1) the instructors of International Academy are not exempt from the employee classification under Nevada law; (2) the

1 instructors are not engaged in an independent enterprise pursuant to the applicable statute; (3) the
2 instructors do not meet the legal criteria to qualify as independent contractors; and (4) the asserted
3 defenses are inapplicable.

4 Thereafter, International Academy filed the instant petition for judicial review. The Court
5 now addresses the instant *Petition for Judicial Review* and finds the following.

6 **STANDARD OF REVIEW**

7 When a party of record in an administrative proceeding is aggrieved by a final decision in a
8 contested case, it may file a petition for judicial review. NRS 233B.130(1). Judicial review of
9 agency decisions is governed by the Administrative Procedure Act, codified in NRS Chapter 233B:
10 The Nevada Administrative Procedure Act. *Liberty Mut. v. Thomasson*, 130 Nev. 27, 30, 317 P.3d
11 831, 834 (2014). Pursuant to NRS 233B.135(1), judicial review of a final decision of an agency
12 must be conducted by the Court without a jury and confined to the record. The reviewing court may
13 remand, affirm or set the decision aside in whole or in part, if the substantial rights of the petitioner
14 have been prejudiced because the final decision of the agency is:

- 15 (a) In violation of constitutional or statutory provisions;
- 16 (b) In excess of the statutory authority of the agency;
- 17 (c) Made upon unlawful procedure;
- 18 (d) Affected by other error of law;
- 19 (e) Clearly erroneous in view of the reliable, probative and substantial
evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion.

20 NRS 233B.135(3)(a)-(f); *See North Las Vegas v. Pub. Serv. Comm'n*, 83 Nev. 278, 281, 429 P.2d
21 66, 67–68 (1967); *see also Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249, 327 P.3d
22 487, 490 (2014) (clarifying that NRS 223B.135 outlines a standard of review and not a standard of
23 proof).

24 Legal questions are reviewed de novo. *Southern Nevada Operating Engineers v. Labor*
25 *Commissioner*, 121 Nev. 523, 527–28, 119 P.3d 720, 724 (2005) (citing *State, Dep't of Bus. &*
26 *Indus., Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 86, 40 P.3d 423, 425 (2002)).
27 However, the final decision of the agency, i.e. the appeals officer, is deemed reasonable and lawful
28 until it is reversed or set aside (in whole or in part) by the court. NRS 223B.135(2).

Moreover, in assessing a final agency decision, great deference is afforded to the fact-based conclusions of law made by an appeal officer and his decision will not be overturned if it is supported by substantial evidence. *Grover C. Dils. Med. Ctr. v. Menditto*, 121 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). Review of an administrative agency’s decision is limited to the determination of whether the record contains substantial evidence to support the agency’s decision. *See Taylor v. State Dep’t of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013); *State, Dep’t. of Motor Vehicles & Pub. Safety v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991) (citing *State Dep’t of Motor Vehicles v. Jenkins*, 99 Nev. 460, 462, 663 P.2d 1186, 1188 (1983)). In this case, “substantial evidence” is evidence which a reasonable mind might accept as adequate to support a conclusion. NRS 233B.135(4). This standard of review thus refers to the quality and quantity of the evidence necessary to support factual determinations. *Nassiri*, 130 Nev. at 249–50, 327 P.3d at 490. “It contemplates deference to those determinations on review, asking only whether the facts found by the administrative factfinder are reasonably supported by sufficient, worthy evidence in the record.” *Id.*

The inquiry is confined to a search for an abuse of discretion, clear error, or an arbitrary and capricious decision. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *see also Employment Security Dep’t v. Holmes*, 112 Nev. 275, 279, 914 P.2d 611, 614 (1996) (“...[the Court] must review the evidence presented to the administrative body and ascertain whether the body acted arbitrarily or capriciously, thus abusing its discretion.”). “[A]n abuse of discretion is characterized by an application of unreasonable judgment to a decision that is within the actor’s rightful prerogatives...” *Falline v. GNLV Corporation*, 107 Nev. 1004, 1009–10 n.3, 823 P.2d 888, 892 n.3 (1991). A decision is arbitrary and capricious when the administrative agency disregards the facts and circumstances involved. *Meadow v. Civil Serv. Bd. of Las Vegas Metro. Police Dep’t*, 105 Nev. 624, 627, 781 P.2d 772, 774 (1989) (citing *State v. Ford*, 110 Wash.2d 827, 830, 755 P.2d 806, 808 (1988)). In addition, “although statutory construction is generally a question of law reviewed de novo, this court defer[s] to an agency’s interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.” *Taylor*, 129 Nev. at 930, 314 P.3d at 951 (citing

1 *Dutchess Bus. Serv., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165
2 (2008) (internal quotations omitted)).

3 **DISCUSSION**

4 In evaluating the arguments made by both International Academy and the Division, the
5 Court has considered the record in its entirety, supporting documentation, parties' arguments, and
6 the pleadings. In doing so, it finds that the Appeals Officer's *Decision and Order* filed on
7 February 20, 2020, is not in violation of constitutional or statutory provisions, affected by error of
8 law, or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole
9 record. Further, International Academy was not arbitrary or capricious or characterized by abuse of
10 discretion nor did it exceed the Appeals Officer's authority. Rather, the Court finds that there was
11 substantial evidence to support the Appeals Officer's final order under review by this Court.

12 In reaching this conclusion, the Court finds as follows:

13 **A. The Record Supports the Employee Classification Finding**

14 The Appeals Officer found NRS 616A.110(9) to be inapplicable to exempt instructors from
15 the employee classification pursuant to NRS 616A.105. International Academy challenges this, and
16 argues the Appeals Officer erred as a matter of law in finding NRS 616A.110(9) inapplicable. More
17 specifically, International Academy contends NRS 616A.110(9) applies because, *inter alia*, the
18 instructors perform services pursuant to a written agreement, which provides that instructors are not
19 employees for the purposes of NRS 616A.

20 A review of the statute advises the Appeals Officer properly determined NRS 616A.110(9)
21 inapplicable. Nevada Revised Statute 616A.110(9) provides that a person who meets the following
22 criteria is exempt from the definition of employee:

- 23 (a) Directly sells or solicits the sale of products, in person or by
24 telephone;
- 25 (2) To another person from his or her home or place other than a
26 retail store;
- 26 (b) Receives compensation or remuneration based on sales to
27 customers rather than for the number of hours that the person
28 works; **and**
- (c) Performs pursuant to a written agreement with the person for
whom the services are performed which provides that the person

1 who performs the services is not an employee for the purposes of
2 this chapter.

3 Based upon the Court’s observation, it is clear the Appeals Officer adequately analyzed the
4 statute as evidenced in finding that “...the instructors do not solicit or sell products and do not
5 receive remuneration based on sale, NRS 616A.110(9) does not apply to exclude the instructors as
6 employees...” And while International Academy maintains the Appeals Officer erred with respect
7 to NRS 616A.110(9), this Court finds the contrary. Instead, this Court determines that by presence
8 of the term “**and**,” NRS 616A.110(9) requires all three prongs to be met for a person to be excluded
9 from the definition of employee. Furthermore, a review of the record depicts the Appeals Officer
10 had substantial evidence to conclude NRS 616A.110(9) inapplicable because the instructors failed
11 to meet subsection (b), i.e., receiving compensation or remuneration based on sales rather than for
12 the number of hours worked. Therefore, the Court concludes the Appeals Officer did not err as a
13 matter of law, and its decision is supported by substantial evidence. Thus, this Court is unwilling to
14 disturb the Appeals Officer’s findings.

15 **B. The Record Supports Independent Enterprise Finding**

16 Next, International Academy contends its instructors are an independent enterprise pursuant
17 to NRS 616B.603. The Appeals Officer found:

18 [T]he instructors are clearly furthering the operation of business of the
19 school by providing the instruction necessary to qualify as a
20 cosmetology school. The instructors are clearly in the same trade
business, occupation or profession as Ms. Casteel and Ms. Schultz.

21 International Academy maintains that because the instructors are not in the same trade, they
22 are an independent enterprise under NRS 616B.603. Additionally, International Academy argues, it
23 can operate without any of the instructors.

24 Nevada Revised Statute 616B.603 provides that a person is not an employer if:

25 (a) The person enters into a contract with another person or business
26 which is an independent enterprise; and

26 (b) The person is not in the same trade, business, profession or
27 occupation as the independent enterprise.

27 2. ... “independent enterprise” means a person who holds himself or
28 herself out as being engaged in a separate business and:

- 1 (a) Holds a business or occupational license in his or her own name;
2 or
3 (b) Owns, rents or leases property used in furtherance of the business.

4 Furthermore, the Nevada Supreme Court has held that “[i]f a principal contractor is not a
5 licensed contractor, it will be the statutory employer only if it can show that it is in the “same trade”
6 under the *Meers* test. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1349 (1995). The *Meers*
7 test “is not one of whether the subcontractor’s activity is useful, necessary, or even absolutely
8 indispensable to the statutory employer’s business.... The test is whether that indispensable activity
9 is, in that business, normally carried on through employees rather than independent contractors.”
10 *Meers v. Haughton Elevator*, 101 Nev. 283, 286 (1985).

11 The record suggests the Appeals Officer had substantial evidence to conclude that the
12 instructors were not engaged in an independent enterprise. For instance, NRS 616B.6039(1)(a)
13 requires both parties to enter into a contract. However, International Academy did not have any
14 written agreements in place prior to 2013. Thus, International Academy failed to meet the statutory
15 requirement for the period from 2010 to 2013. Moreover, the fact that International Academy
16 requires instructors to pay “chair rental fees” or “choose at his or her own discretion to teach other
17 general classes in lieu of the rental fee,” fails to meet the criteria under NRS 616B.6039(2)(b) since
18 the original agreements did not include any mention of rental chairs or booths. The Court concludes
19 the Appeals Officer’s decision is supported by substantial evidence, and thus it is unwilling to
20 disturb the Appeals Officer’s findings.

21 **C. The Record Supports the Independent Contractor Finding**

22 International Academy’s next contention is that the Appeals Officer erred in finding the
23 instructors were not independent contractors pursuant to NRS 616A.255 and the five-part “control
24 test” enunciated by the Nevada Supreme Court in *Clark Cty. v. State Indus. Ins. Sys.*

25 Nevada Revised Statute 616A.255 defines an “Independent contractor” as a “person who
26 renders service for a specified recompense for a specified result, under the control of the person’s
27 principal as to the result of the person’s work only and not as to the means by which such result is
28 accomplished.” Furthermore, in determining whether an employer-employee relationship exist,
courts apply the following five-part “control test”:

- (1) the degree of supervision;
- (2) the source of wages;
- (3) the existence of a right to hire and fire;
- (4) the right to control the hours and location of employment; and
- (5) the extent to which the workers' activities further the general business concerns of the alleged employer.

Clark Cty. v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986).

A review of the record depicts the Appeals Officer had substantial evidence to conclude that the control test weighed against the International Academy. Consider, for example, the following:

First, the Appeals Officer found International Academy "must ensure that instructors are providing instruction according to the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary." The record illustrates multiple instances of supervision, including: (1) one specific contract requires the instructor to record grades and attendance; (2) statements from Ms. Casteel's to the Attorney General's investigator in which she explained International Academy terminated an instructor because the instructor required a student to bring her food. Conduct which Ms. Casteel deemed unacceptable; (3) termination clauses in later agreements which provided International Academy "may terminate this agreement at any time "for cause," the grounds for which are defined below." Those grounds include "C. Instructor fails to perform his or her services in a competent manner" and "G. Instructor fails to perform the terms and conditions as agreed upon under this Agreement." The Court notes some degree of supervision is required to determine whether an instructor was performing pursuant to the terms of the agreement and providing competent instruction in accordance with the professional standards.

Second, the Appeals Officer found the source of the instructors' wages derives from International Academy. While International Academy appears to maintain that it is not the source of wages because it has designated a specific account for wages, the Appeals Officer considered this evidence by finding that "simply designating a specific account does not negate this fact," and drawing the following analogy: "A certain amount of money is set aside from students tuition to provide for compensation to the instructors similar in fashion to corporation setting aside a certain amount profit for compensation of employees."

1 Third, the Appeals Officer found “[c]learly, [International Academy] has the right to sever a
2 relationship with an instructor that is not teaching according to the guidelines of the Board of
3 Cosmetology.” This Court again notes Ms. Casteel’s statements regarding the termination of an
4 instructor for requiring a student to bring her food. The instructor ultimately filed a successful
5 unemployment claim with the Department of Employment, Training and Rehabilitation against
6 International Academy, giving further credence to this factor.

7 Fourth, the Appeals Officer found that International Academy “controls the location of
8 employment since the instruction must be done at the school. The instructor is not allowed to
9 provide the instruction at a salon or residence. The hours are controlled by the school as two
10 instructors are required to be present at all times.” This Court notes each agreement contains a
11 schedule during which the instructor is to work between Tuesday and Saturday with hours ranging
12 from 8:45 a.m. to 10:30 p.m. Thus, suggesting control of the hours and location of employment.

13 Fifth, the Appeals Officer found “obviously the instructors are furthering the business
14 concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz who also
15 both instruct students.” The record does not suggest otherwise.

16 Finally, the Appeals Officer found the testimony of Ms. Casteel to be self-serving, noted that
17 it appeared to be scripted and therefore not found to be credible. Additionally, the Appeals Officer
18 also found the witness statements introduced by International Academy to be “nearly verbatim and
19 obviously prepared by the same individual and therefore were given no weight.”

20 Based upon the Court’s observation of the persuasive evidence above, as well as the record
21 as a whole, it is clear the Appeals Officer adequately analyzed both the law and the specific factual
22 allegations which were lodged against International Academy. And while International Academy
23 contends that the evidence in the record depicts that the Appeals Officer’s decision was “clearly
24 erroneous,” this Court finds quite the contrary. Instead, this Court determines that there was
25 virtually overwhelming evidence from which the Appeals Officer concluded the instructors did not
26 meet the independent contractor classification. Further, the Court concludes the Appeals Officer did
27 not violate NRS 233B.135(3), and thus it is unwilling to disturb the Appeals Officer’s findings.

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NONE

JASON GUINASSO, ESQ.

Christine Kuhl

Judicial Assistant

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Reno, NV 89521

6 *Attorney for International Academy of Style*

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9
10 IN AND FOR THE COUNTY OF WASHOE

11 INTERNATIONAL ACADEMY OF
STYLE,

12 Petitioner,

13 vs.

14 DIVISION OF INDUSTRIAL
RELATIONS, and the NEVADA
15 DEPARTMENT OF ADMINISTRATION,
APPEALS OFFICER SHEILA MOORE,

16 Respondents.
17

Case No.: CV20-00445

Dept. No.: 8

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was entered on
20 March 1, 2021, a copy of which is attached as **Exhibit "1."**

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Hutchinson & Steffen, and that on the 31 day of March, 2021, I electronically filed a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Donald Smith, Esq.
400 West King Street, Suite 400
Carson City, Nv 89703
Attorney for Division Of Industrial Relations

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 31 day of March, 2021, I deposited for mailing in Reno, Nevada a true and correct copy of the **NOTICE OF ENTRY OF ORDER**, addressed to:

International Academy of Style
Bonnie Schultz & Loni Casteel
2295 Market Street
Reno, NV 89502

Nevada Department of Admin.
Appeals Division
1050 E William St., Suite 450
Carson City, NV 89701

Attorney General's Office
100 N Carson Street
Carson City, NV 89701

Legal Section
Division of Industrial Relations
400 West King Street, Suite 201
Carson City, NV 89703

Nevada Department of Admin.
Director
515 East Musser St., 3rd Floor
Carson City, NV 89701


Ga'Brieala Mitchell

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit “1”	Order Denying Petition for Judicial Review	11

Exhibit “1”

Exhibit “1”

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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Having reviewed the record, briefs, the parties' arguments, and applicable authority, the Court **DENIES** the *Petition for Judicial Review*. Thus, the Court **AFFIRMS** the Appeals Officer's *Decision and Order* filed on February 20, 2020.

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16 argues the Appeals Officer erred as a matter of law in finding NRS 616A.110(9) inapplicable. More
17 specifically, International Academy contends NRS 616A.110(9) applies because, *inter alia*, the
18 instructors perform services pursuant to a written agreement, which provides that instructors are not
19 employees for the purposes of NRS 616A.

20 A review of the statute advises the Appeals Officer properly determined NRS 616A.110(9)
21 inapplicable. Nevada Revised Statute 616A.110(9) provides that a person who meets the following
22 criteria is exempt from the definition of employee:

- 23 (a) Directly sells or solicits the sale of products, in person or by
24 telephone;
25 (2) To another person from his or her home or place other than a
26 retail store;
27 (b) Receives compensation or remuneration based on sales to
28 customers rather than for the number of hours that the person
works; **and**
(c) Performs pursuant to a written agreement with the person for
whom the services are performed which provides that the person

1 who performs the services is not an employee for the purposes of
2 this chapter.

3 Based upon the Court's observation, it is clear the Appeals Officer adequately analyzed the
4 statute as evidenced in finding that "...the instructors do not solicit or sell products and do not
5 receive remuneration based on sale, NRS 616A.110(9) does not apply to exclude the instructors as
6 employees..." And while International Academy maintains the Appeals Officer erred with respect
7 to NRS 616A.110(9), this Court finds the contrary. Instead, this Court determines that by presence
8 of the term "and," NRS 616A.110(9) requires all three prongs to be met for a person to be excluded
9 from the definition of employee. Furthermore, a review of the record depicts the Appeals Officer
10 had substantial evidence to conclude NRS 616A.110(9) inapplicable because the instructors failed
11 to meet subsection (b), i.e., receiving compensation or remuneration based on sales rather than for
12 the number of hours worked. Therefore, the Court concludes the Appeals Officer did not err as a
13 matter of law, and its decision is supported by substantial evidence. Thus, this Court is unwilling to
14 disturb the Appeals Officer's findings.

15 **B. The Record Supports Independent Enterprise Finding**

16 Next, International Academy contends its instructors are an independent enterprise pursuant
17 to NRS 616B.603. The Appeals Officer found:

18 [T]he instructors are clearly furthering the operation of business of the
19 school by providing the instruction necessary to qualify as a
20 cosmetology school. The instructors are clearly in the same trade
 business, occupation or profession as Ms. Casteel and Ms. Schultz.

21 International Academy maintains that because the instructors are not in the same trade, they
22 are an independent enterprise under NRS 616B.603. Additionally, International Academy argues, it
23 can operate without any of the instructors.

24 Nevada Revised Statute 616B.603 provides that a person is not an employer if:

- 25 (a) The person enters into a contract with another person or business
26 which is an independent enterprise; and
27 (b) The person is not in the same trade, business, profession or
28 occupation as the independent enterprise.
 2. ... "independent enterprise" means a person who holds himself or
 herself out as being engaged in a separate business and:

- 1 (a) Holds a business or occupational license in his or her own name;
2 or
3 (b) Owns, rents or leases property used in furtherance of the business.

4 Furthermore, the Nevada Supreme Court has held that “[i]f a principal contractor is not a
5 licensed contractor, it will be the statutory employer only if it can show that it is in the “same trade”
6 under the *Meers* test. *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1349 (1995). The *Meers*
7 test “is not one of whether the subcontractor’s activity is useful, necessary, or even absolutely
8 indispensable to the statutory employer’s business.... The test is whether that indispensable activity
9 is, in that business, normally carried on through employees rather than independent contractors.”
10 *Meers v. Haughton Elevator*, 101 Nev. 283, 286 (1985).

11 The record suggests the Appeals Officer had substantial evidence to conclude that the
12 instructors were not engaged in an independent enterprise. For instance, NRS 616B.6039(1)(a)
13 requires both parties to enter into a contract. However, International Academy did not have any
14 written agreements in place prior to 2013. Thus, International Academy failed to meet the statutory
15 requirement for the period from 2010 to 2013. Moreover, the fact that International Academy
16 requires instructors to pay “chair rental fees” or “choose at his or her own discretion to teach other
17 general classes in lieu of the rental fee,” fails to meet the criteria under NRS 616B.6039(2)(b) since
18 the original agreements did not include any mention of rental chairs or booths. The Court concludes
19 the Appeals Officer’s decision is supported by substantial evidence, and thus it is unwilling to
20 disturb the Appeals Officer’s findings.

21 **C. The Record Supports the Independent Contractor Finding**

22 International Academy’s next contention is that the Appeals Officer erred in finding the
23 instructors were not independent contractors pursuant to NRS 616A.255 and the five-part “control
24 test” enunciated by the Nevada Supreme Court in *Clark Cty. v. State Indus. Ins. Sys.*

25 Nevada Revised Statute 616A.255 defines an “Independent contractor” as a “person who
26 renders service for a specified recompense for a specified result, under the control of the person’s
27 principal as to the result of the person’s work only and not as to the means by which such result is
28 accomplished.” Furthermore, in determining whether an employer-employee relationship exist,
courts apply the following five-part “control test”:

- (1) the degree of supervision;
- (2) the source of wages;
- (3) the existence of a right to hire and fire;
- (4) the right to control the hours and location of employment; and
- (5) the extent to which the workers' activities further the general business concerns of the alleged employer.

Clark Cty. v. State Indus. Ins. Sys., 102 Nev. 353, 354 (1986).

A review of the record depicts the Appeals Officer had substantial evidence to conclude that the control test weighed against the International Academy. Consider, for example, the following:

First, the Appeals Officer found International Academy "must ensure that instructors are providing instruction according to the guidelines of the Board of Cosmetology. To do so, some amount of supervision is necessary." The record illustrates multiple instances of supervision, including: (1) one specific contract requires the instructor to record grades and attendance; (2) statements from Ms. Casteel's to the Attorney General's investigator in which she explained International Academy terminated an instructor because the instructor required a student to bring her food. Conduct which Ms. Casteel deemed unacceptable; (3) termination clauses in later agreements which provided International Academy "may terminate this agreement at any time "for cause," the grounds for which are defined below." Those grounds include "C. Instructor fails to perform his or her services in a competent manner" and "G. Instructor fails to perform the terms and conditions as agreed upon under this Agreement." The Court notes some degree of supervision is required to determine whether an instructor was performing pursuant to the terms of the agreement and providing competent instruction in accordance with the professional standards.

Second, the Appeals Officer found the source of the instructors' wages derives from International Academy. While International Academy appears to maintain that it is not the source of wages because it has designated a specific account for wages, the Appeals Officer considered this evidence by finding that "simply designating a specific account does not negate this fact," and drawing the following analogy: "A certain amount of money is set aside from students tuition to provide for compensation to the instructors similar in fashion to corporation setting aside a certain amount profit for compensation of employees."

1 Third, the Appeals Officer found “[c]learly, [International Academy] has the right to sever a
2 relationship with an instructor that is not teaching according to the guidelines of the Board of
3 Cosmetology.” This Court again notes Ms. Casteel’s statements regarding the termination of an
4 instructor for requiring a student to bring her food. The instructor ultimately filed a successful
5 unemployment claim with the Department of Employment, Training and Rehabilitation against
6 International Academy, giving further credence to this factor.

7 Fourth, the Appeals Officer found that International Academy “controls the location of
8 employment since the instruction must be done at the school. The instructor is not allowed to
9 provide the instruction at a salon or residence. The hours are controlled by the school as two
10 instructors are required to be present at all times.” This Court notes each agreement contains a
11 schedule during which the instructor is to work between Tuesday and Saturday with hours ranging
12 from 8:45 a.m. to 10:30 p.m. Thus, suggesting control of the hours and location of employment.

13 Fifth, the Appeals Officer found “obviously the instructors are furthering the business
14 concerns of the school they provide instruction for, including Ms. Casteel and Ms. Schultz who also
15 both instruct students.” The record does not suggest otherwise.

16 Finally, the Appeals Officer found the testimony of Ms. Casteel to be self-serving, noted that
17 it appeared to be scripted and therefore not found to be credible. Additionally, the Appeals Officer
18 also found the witness statements introduced by International Academy to be “nearly verbatim and
19 obviously prepared by the same individual and therefore were given no weight.”

20 Based upon the Court’s observation of the persuasive evidence above, as well as the record
21 as a whole, it is clear the Appeals Officer adequately analyzed both the law and the specific factual
22 allegations which were lodged against International Academy. And while International Academy
23 contends that the evidence in the record depicts that the Appeals Officer’s decision was “clearly
24 erroneous,” this Court finds quite the contrary. Instead, this Court determines that there was
25 virtually overwhelming evidence from which the Appeals Officer concluded the instructors did not
26 meet the independent contractor classification. Further, the Court concludes the Appeals Officer did
27 not violate NRS 233B.135(3), and thus it is unwilling to disturb the Appeals Officer’s findings.

28 //

1 **D. The Record Supports the Defenses Finding**

2 Finally, the Appeals Officer found the doctrine of *res judicata*, laches, and equitable
3 estoppel did not apply. International Academy challenges these findings. The Court notes that *res*
4 *judicata* requires identical issues and parties. However, as the Appeals Officer points out, the
5 Division was not a party to the prosecutorial action taken by the Attorney General. Moreover,
6 laches requires International Academy to be disadvantaged by the period of 15-months leading up
7 to the penalties, in which the investigation was taking place. There is no evidence in the record to
8 suggest International Academy was disadvantaged. Additionally, equitable estoppel requires
9 International Academy to be ignorant of the true state of the facts in the matter. The record suggests
10 quite the contrary as International Academy was put on notice by the Attorney General after it
11 failed to renew the policy once the initial charges were dismissed. Thus, the Court can perceive of
12 no basis for a violation of NRS 233B.135(3).

13 **CONCLUSION**

14 Based on the aforementioned reasons, IT IS HEREBY ORDERED that International
15 Academy's Petition for Judicial Review is **DENIED** and the Appeals Officer's *Decision and Order*
16 filed February 20, 2020 is **AFFIRMED**.

17 **IT IS SO ORDERED.**

18 **DATED** this 1 day of March, 2021.

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20 BARRY L. BRESLOW
21 District Judge

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NONE

JASON GUINASSO, ESQ.

DONALD C. SMITH, ESQ.

Christine Kuhl

Judicial Assistant

CASE NO. CV20-00445

INTERNATIONAL ACADEMY VS. DV OF INDUS RELATIONS

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

03/09/2020

CONFERENCE CALL

HONORABLE

Jason Guinasso, Esq., was present, via phone, on behalf of Plaintiff, International Academy of Style, who was not present.

BARRY

BRESLOW

Don Smith, Deputy Attorney General, was present, via phone, on behalf of Defendant, Division of Industrial Relations, who was not present.

DEPT. NO. 8

J. Encallado

(Clerk)

3:45 p.m. – Court convened with Court and respective counsel present.

The Court addressed respective counsel regarding the Plaintiff's Application for Stay of Appeal Officer's February 20, 2020 Decision and Order.

Counsel Guinasso addressed the Court and argued on behalf of the Plaintiff's Application for Stay of Appeal Officer's February 20, 2020 Decision and Order.

Counsel Smith addressed the Court and responded he was willing to consider the Stay as long as the Plaintiff keeps the workers' compensation coverage active.

COURT ORDERED: Plaintiff's Application for Stay of Appeal Officer's February 20, 2020 is deemed MOOT. Plaintiff must keep the workers' compensation coverage active pending resolution of this case.

3:52 p.m. – Court stood in recess.

CASE NO. CV20-00445

INTERNATIONAL ACADEMY VS. DV OF INDUS RELATIONS

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

1/28/2020
HONORABLE
BARRY
BRESLOW
DEPT. NO. 8
J. Encallado
(Clerk)
I. Zihn
(Reporter)

STATUS HEARING

Hearing conducted via Zoom Video conferencing.

No counsel was present in Court on behalf of Plaintiff, International Academy of Style, who was also not present.

Donald Smith, Esq. was present in Court, on behalf of Defendant, Division of Industrial Relations, who was not present.

This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged receipt of the Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules – Part 9 relating to simultaneous audiovisual transmissions and all counsel stated that they had no objection to going forward in this manner.

11:00 a.m. – Court convened with Court and counsel for Defendant present.

The Court addressed counsel and inquired of counsel if he could attempt to get a hold of counsel for the Plaintiff as he was not present in Court.

11:03 a.m. – Recess

11:16 a.m. – Court reconvened with Court and counsel for the Defendant present.

Discussion ensued between the Court, the Court clerk and counsel Smith as to attempts to get a hold of counsel for the Plaintiff, to no avail.

COURT ORDERED: Oral Arguments hearing is CONTINUED.

Counsel shall contact the Judicial Assistant for Department 8 and reset the matter.

11:18 a.m. – Court stood in recess.

CASE NO. CV20-00445

INTERNATIONAL ACADEMY VS. DIVISION OF INDUS. RELATIONS

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

02/11/2021

ORAL ARGUMENTS

HONORABLE

Jason Guinasso, Esq. was present on behalf of the Plaintiff, who was not present. Donald Smith, Esq. was present on behalf of the Defendant, who was not present.

BARRY

BRESLOW

DEPT. NO. 8

A. DeGayner
(Clerk)

I. Zihn

(Reporter)

This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared via simultaneous audiovisual transmission. The court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules – Part 9 relating to simultaneous audiovisual transmissions and all counsel stated they had no objection to going forward in this manner.

2:00 p.m. – Court convened with Court and respective counsel present.

PATY Guinasso addressed the Court and apologized for not appearing at the prior hearing due to a scheduling issue. PATY Guinasso argued in support of the Petition for Judicial Review to include that the appeal officer's decision was affected by clear error of law. PATY Guinasso further argued that the appeal officer's decision isn't supported by substantial evidence and, as a result, the decision is arbitrary, capricious and characterized by abuse of discretion.

DATY Smith addressed the Court and argued in opposition to the Petition for Judicial Review to include that the workers' comp definition of what an employee is includes independent contractors.

PATY Guinasso argued that not all independent contractors are deemed employees, that issue has been briefed. PATY Guinasso argued further in support of the Petition for Judicial Review. PATY Guinasso argued that credibility determinations were not actually made as to witnesses, the legal determination made by the hearing officer was clearly erroneous and should be overturned with instructions to find that the Plaintiff was not required to pay workers' comp and therefore not required to provide coverage.

DATY Smith argued that employers may not require an employee to provide their own workers' compensation coverage. DATY Smith argued further that the appeal officer's decision and order was based on substantial evidence and not affected by error. DATY Smith argued that this is not a situation wherein the Court reweighs the evidence, and workers' compensation includes independent contractors by statute. DATY Smith argued that the Petition for Judicial Review should be denied.

PATY Guinasso argued further that the Court should grant the Petition for Judicial Review and reverse the conclusions of law of the appeal officer.

COURT ORDERED: Petition for Judicial Review – UNDER SUBMISSION.

Court stood in recess.

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

INTERNATIONAL ACADEMY OF STYLE,

Case No. CV20-00445

Petitioner,

Dept. No. 8

vs.

DIVISION OF INDUSTRIAL RELATIONS, and the
NEVADA DEPARTMENT OF ADMINISTRATION,
APPEALS OFFICER SHEILA MOORE,

Respondents.

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 3rd day of May, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 3rd day of May, 2021.

Alicia Lerud, Interim

Clerk of the Court

By /s/YViloria

YViloria

Deputy Clerk

Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Case No. CV20-00445

INTERNATIONAL ACADEMY OF STYLE,

Dept. No. 8

Petitioner,

vs.

DIVISION OF INDUSTRIAL RELATIONS, and the
NEVADA DEPARTMENT OF ADMINISTRATION,
APPEALS OFFICER SHEILA MOORE,

Respondents.

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel of Record:

On April 30th, 2021, Attorney Jason D. Guinasso, Esq. for International Academy of Style, filed a Notice of Appeal with the Court. Attorney Guinasso was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2021-05(A).

Pursuant to NRAP 3(a)(3), on May 3rd, 2021, the Notice of Appeal will be filed with the Nevada Supreme Court. By copy of this notice. Attorney Guinasso was notified by electronic mail of the deficiency. (A notice to pay will be issued once the Notice of Appeal is filed in by the Nevada Supreme Court.)

Dated this 3rd day of May, 2021.

Alicia Lerud, Interim
Clerk of the Court
By: /s/YViloria
YViloria
Deputy Clerk

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CERTIFICATE OF SERVICE

CASE NO. CV20-00445

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 3rd day of May, 2021, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

DONALD SMITH, ESQ. for DIVISION OF INDUSTRIAL RELATIONS
JASON GUINASSO, ESQ. for INTERNATIONAL ACADEMY OF STYLE

/s/YViloria
YViloria
Deputy Clerk